

In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. See 86 Ill. Adm. Code 130.1940. (This is a GIL.)

December 16, 1998

Dear Xxxxx:

This letter is in response to your letter dated June 22, 1998. We regret the delay in our response. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Please provide us with an answer to the following sales tax issues:

COMPANY performs paving and asphalt services for various rail roads that have crossings in Illinois. All work is billed to the Railroads. All work is done at crossings that are also part of the public highways. Since the materials are incorporated into the public roads, they are exempt from sales tax.

However, sales tax was paid in error on materials that were used for an exempt purpose. Therefore, we request to know the procedure for refund of sales taxes paid in error from 1994 through 1997.

Should you have any questions or need any additional information, please contact us.

As stated in our June 4, 1998 letter to you, the term construction contractors includes general contractors, subcontractors, and specialized contractors such as landscape contractors. Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. The term contractor means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not

pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

As previously stated, contractors are deemed end users of property that is purchased for incorporation into real property. If general contractors did not purchase the tangible personal property, then the general contractors cannot be held liable for tax due on other entities' purchases. If subcontractors are utilized and are acting as construction contractors, the transaction between the general contractors and the subcontractors is not a taxable transaction. The subcontractors incur Use Tax liability on any tangible personal property that they purchase for incorporation into real estate. If, however, general contractors make purchases and then contract to have subcontractors do the installation, the general contractors incur Use Tax liability because they are making the purchases of such tangible personal property.

In Illinois, organizations that are determined by the Department to be exclusively charitable, religious, educational, or a governmental body, are issued tax exemption identification numbers ("E" numbers). Organizations holding such numbers are exempted from paying sales tax on organizational purchases. The organization must obtain and present this number to a retailer, however, before it can make a tax-free purchase. Suppliers selling tangible personal property to such exempt organizations must retain the "E" number in order to document the exempt sale.

As stated above, contractors are generally considered to be the end users of tangible personal property they permanently incorporate into real estate and owe Use Tax upon their purchases. However, contractors who physically incorporate tangible personal property into real estate owned by holders of "E" numbers can purchase such property tax-free by providing their suppliers with the certification described in Section 130.2075(d), as well as the "E" number of the group into whose real estate that property will be incorporated. The suppliers should retain this information in order to document the tax-exempt sale.

Further, 86 Ill. Adm. Code 130.2075(e) provides that tangible personal property which will be physically incorporated into public improvements, the ownership of which is required to be conveyed to a unit of local government pursuant to a pre-development transfer requirement, is exempt from Retailers' Occupation Tax and Use Tax. To claim the exemption, contractors must provide their suppliers with the exemption identification number of the governmental unit to which the public improvements will be transferred upon completion. The pre-development transfer agreement may take any of the forms contained in subsection (e)(1-4).

Enclosed is a copy of 86 Ill. Adm. Code 130.1501, which describes the procedures used to obtain a credit for sales tax that is erroneously paid. Please note that only persons who have actually paid tax to the Department can file a claim for credit. Since retailers usually pay the tax to the Department, usually only retailers can file a claim for credit.

In order to submit claims for credit, taxpayers must first establish that they have either borne the burden of the tax or that they have unconditionally repaid the amount of tax to the vendees from whom they have collected the tax. The taxpayers must apply for the credit in the manner described in the rule. Under Illinois sales tax laws, retailers are not required to file claims for credit. The Department has no authority to compel sellers to file a claim for

credit. Whether or not sellers refund the taxes paid and file claims for credit with the Department is a private matter between sellers and purchasers.

The statute of limitations for filing claims for credit is described in Section 130.1501(a)(4). The language is somewhat confusing but, boiled down, it means that the statute of limitations is 3 to 3 1/2 years and expires in 6 month blocks. For example, on July 1, 1994, the statute of limitations expired for claims to recover taxes that were erroneously paid in the first 6 months of 1991.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.